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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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JUN 30 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

\_\_\_\_\_  
In the Matter of \_\_\_\_\_  
Administration of the North American  
Numbering Plan Carrier Identification  
Codes (CICs) \_\_\_\_\_  
Petition for Rulemaking of VarTec  
Telecom., Inc. \_\_\_\_\_

CC Docket No. 92-237

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**REPLY OF TELECOMMUNICATIONS GROUP, INC.**

Telco Communications Group, Inc. ("Telco") submits this reply in support of its petition urging the Commission to reconsider its Second Report and Order ("Order") in the proceeding captioned above.<sup>1</sup>

The comments filed in response to the petitions for reconsideration of the Commission's *Order* overwhelmingly confirm that the *Order*'s truncated transition period for permitting parties to use both 3-digit and 4-digit Carrier Identification Codes ("CICs") is impracticable, unjustified, and procedurally defective. Indeed, the requests for longer transition periods in the petitions for reconsideration filed by Telco and the Competitive Telecommunications Association ("CompTel") received nearly unanimous support by those

<sup>1</sup> Administration of the North American Numbering Plan Carrier Identification Codes (CICs); Petition for Rulemaking of VarTec Telecom., Inc., CC Docket 92-237, *Second Report and Order*, FCC 97-125, (released April 11, 1997) ("Order").

commenters who addressed the issue.<sup>2</sup> Only U S West, Inc. ("U S West") argued for a different result.<sup>3</sup> Yet, as demonstrated by the wide variety of comments to this proceeding, U S West's arguments are simply untenable.

I. THE MAY 1994 NPRM DID NOT CONSTITUTE ADEQUATE NOTICE OF THE CIC CONVERSION

U S West supports the *Order's* finding that the Commission should adopt a transition period far shorter than that originally proposed, effectively starting the transition period with the issuance of the NPRM rather than the issuance of the final rules adopting a transition period. The *Order's* rationale, however, is defective. First, it impermissibly relies on the NPRM as adequate notice. Second, the *Order* improperly concludes that a shorter time period is adequate.

U S West and the *Order* justify shortening the transition period originally proposed by the Commission by crediting the period following the NPRM toward the transition period. Yet a transition period must begin with adoption of final rules, not the notice of proposed rules. In fact, by suggesting that the period following the NPRM afforded parties sufficient time for a transition, the *Order* implicitly acknowledges that a period longer than the eight months between the release of *Order* and the January 1, 1998 termination of transition period is

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<sup>2</sup> See, e.g., Comments of MCI Telecommunications Corporation ("*MCI Comments*") at 7-8 (supporting a transition extension until it is *necessary* to accommodate the need for CICs); Comments of AT&T Corp. ("*AT&T Comments*") at 4 (generally supporting a longer transition period); Comments of WorldCom, Inc. ("*WorldCom Comments*") at 8 (supporting conversion of LEC switches by January 1, 1998 and transition period until January 1, 2000); Comments of Telecommunications Resellers Association ("*TRA Comments*") at 8-9 (supporting conversion of LEC switches by January 1, 2000 and conversion to four-digit CICs a minimum of one year later); Comments of Long Distance International ("*LDI Comments*") at 1-3 (supporting an extension until January 1, 2000); and Comments of Cable & Wireless, Inc. ("*CWI Comments*") at 5-6 (supporting an extension until January 1, 2000).

necessary. Where the *Order* fails is its finding that the transition should begin retroactively from the date the NPRM was released rather than date the final rules were adopted.

Not only is the Order's analysis procedurally defective as matter of due process and under the Administrative Procedure Act, but it is unrealistic from a practical perspective. U S West and the *Order* apparently expect that parties should have used the period following issuance of the NPRM to implement what was at that point merely a proposal by the Commission, risking stranded investment, needless disruption, and a damaged reputation should the Commission's final rules differ from those proposed in the Notice. The Commission cannot reasonably expect industry participants to invest millions of dollars in reengineered software, field testing and customer education efforts based on a "maybe"(which is all an NPRM is).

Even if, moreover, parties had done precisely what U S West and the *Order* suggest they should have done – treated the NPRM as a final order – they *still* would be denied the time needed to adjust to the *Order* since the NPRM proposed a six-year transition period. U S West and the *Order* cannot , on the one hand, maintain that Telco and others should have assumed that the NPRM would be adopted unchanged, and on the other hand, penalize them for relying upon the six-year transition period it proposed.

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<sup>3</sup> U S West Opposition at 3-8.

II. ALL LEC SWITCHES MUST BE CONVERTED BEFORE FIELD TESTING AND CONSUMER REEDUCATION EFFORTS CAN BEGIN

Telco and other petitioners observed that the transition period adopted by the Commission must extend beyond the point of ubiquitous implementation of four-digit CICs in ILEC end office switches because carriers will need the period following ubiquitous implementation to conduct field-testing and consumer education efforts. U S West argues that all of its switches have been reconfigured to accommodate four-digit CICs, and that it is bad policy and unlawful for the Commission to delay the conversion to 4-digit CICs "based on general, unsupported statements of 'concern'" by petitioners regarding implementation of four-digit CICs by small telecommunications carriers.<sup>4</sup>

In its Petition, Telco acknowledged that Bell Operating Companies, like U S West, may be prepared to upgrade their switches to process the new seven-digit carrier access codes ("CACs") by January 1, 1998. Telco indicated, however, that meetings with independent local exchange carriers revealed that few independents would be prepared to reliably handle new CACs by year-end. WorldCom, TRA and CWI had similar reports from their contacts with small telephone companies.<sup>5</sup> To the extent the Commission and U S West seek further confirmation, the Commission can exercise its authority under the Act to seek additional data by issuing information requests to the ILECs.<sup>6</sup>

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<sup>4</sup> *Id.* at 5.

<sup>5</sup> See *WorldCom Comments* at 2, 5-6; *TRA Comments* at 3; *CWI Comments* at 3.

<sup>6</sup> See 47 U.S.C. §§ 154(l) and (j).

U S West and AT&T suggest that switch conversion delays for smaller telephone companies could be addressed by allowing waivers of the conversion requirements. Sporadic implementation of four-digit CICs is not a feasible solution for dial-around long distance carriers. Telco operates on a nationwide basis. Its customers are distributed throughout the country in the serving areas of former Bell Operating Companies and independent telephone companies alike. If the Commission were to mandate use of four-digit CICs before *all* LECs had completed their switch conversion, Telco would be at a severe disadvantage. Telco would be able to serve some, but not all of its customers, leading to customer disruption and dissatisfaction, and ultimately (and perhaps irreparably) damaging its reputation. This is no small matter for relatively new entrants to a well-established market, like dial-around long distance carriers, who are still establishing themselves as high quality, reliable providers of interexchange services.

III. PRACTICAL MARKETPLACE REALITIES REQUIRE A MINIMUM  
TRANSITION PERIOD OF ONE YEAR FROM THE DATE OF  
CONVERSION OF ALL LEC SWITCHES

As Telco argued in its Petition, a proper time frame for the transition from three-digit to four-digit CICs must accommodate the practical realities of the conversion process. First, as discussed above, the LECs must complete conversion of their switches. Second, once all end-office switches are upgraded, carriers will need to field test traffic in their service areas to confirm proper CAC processing. Only then can Telco and similarly situated carriers begin the re-education and marketing effort required for consumers.

Notably, Telco's estimates of the time required to educate consumers are not inconsistent with the only opponent of a longer transition period. U S West argues that the Commission should permit no more than nine months of consumer education.<sup>7</sup> US West simply omitted field testing from its calculations.

#### IV. U S WEST'S OPPOSITION TO TELCO'S ARGUMENTS REGARDING EXHAUSTION OF CICS MISSES THE MARK

In its Petition, Telco challenged the *Order's* conclusion that an abbreviated transition period, ending January 1, 1998, was justified since the number of available 5XXX and 6XXX four-digit transition CICs would not last beyond the end of 1997.<sup>8</sup> In opposition, U S West argues that Telco failed to demonstrate error in the Commission's reasoning. U S West, however, misses the point. It is not that Telco found error in the Commission's analysis. In fact, Telco noted in its Petition that the Commission's assumptions regarding the likely exhaustion dates for the existing CIC supply were reasonable under its analysis. The problem raised by Telco was the lack of underlying support for those particular assumptions, and the equally reasonable assumptions which favor a much longer transition period.

MCI's comments support Telco's position. According to MCI, data collected from Bellcore indicates that, as of May 14, 1997, the projected exhaustion of 5XXX and 6XXX numbers is 79 months away.<sup>9</sup> Moreover, even if every entity is allowed to have two CICs, the available numbers will not be

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<sup>7</sup> U S West Opposition at 5-6.

<sup>8</sup> *Order* at ¶ 45 n.149.

exhausted until over two years from now. Given the crucial competitive role that dial-around carriers play, particularly with respect to that segment of the consumer market which has been overlooked (and overcharged) by traditional interexchange carriers, the Commission cannot ignore reasonable CIC usage assumptions that would better target the appropriate transition period for four-digit CICs.

IV. VARTEC'S PROPOSAL TO GRANDFATHER THREE-DIGIT CICS WOULD BEST SERVE RATEPAYERS AND THE COMMISSION'S PRO-COMPETITIVE POLICIES

VarTec Telecom. Inc.'s ("VarTec's") reconsideration petition urges the Commission to grandfather three-digit CICs by enabling switches to process three- and four-digit CICs simultaneously. Telco reiterates its support for this resolution. As discussed above, dial-around long distance is a nascent industry, vulnerable to competitive obstacles. Existing providers like Telco have expended enormous resources to establish this new market, and more importantly, to serve those consumers who have benefited least from the competitive provision of interstate services: older Americans with lower calling volumes and cautious buying habits, to whom established interexchange carriers have not directed their discount plans or their marketing.

As described in its Petition, approximately thirty-five percent of Telco's customers are over the age of 65. These customers spend less than \$20 per month for long-distance telephone service, and are therefore seldom the

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<sup>9</sup> MCI Comments at 2.

beneficiaries of major telecommunications carriers' pricing plans and discounts. Telco gives these consumers steeply discounted dial-around service. Telco's investment in this niche market has been substantial. The competitive neutrality concerns raised by AT&T and Sprint in opposition to grandfathering (and by U S West in opposition to a lengthier transition period) must be weighed against this background.

To be consistent with its efforts over the past decade to introduce competition into common carrier markets, the Commission must establish rules and regulations that allow new businesses to flourish and do not impede the development of competitive alternatives for consumers. The Commission's *Order* threatens the competitive viability of dial-around carriers by proposing to strip three-digit CICs from dial-around carriers who have built their businesses and brand identification around their existing three-digit CIC assignments. The *Order* ignores the steep costs already incurred by dial-around long distance providers both in educating consumers and in building their reputations as high-quality alternative long distance service providers. Instead of encouraging competitive entry, the *Order* penalizes those who first took the risk of market entry.

U S West's concern that the grandfathering of three-digit CICs will "preclude an orderly transition" to five-digit CICs is a bridge that the Commission need not cross at this time.<sup>10</sup> For present purposes, the Commission can order

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<sup>10</sup> See *U S West Opposition* at 7.



carriers to assign four-digit CICs in the “1” sequence only after the other sequences –2XXX, 3XXX, etc.– have been used. Once those codes have been assigned, the Commission can reevaluate, based on competitive circumstances and CIC code demand at that time, whether a transition to five-digit CICs is necessary and whether three- and four-digit CIC assignments should be grandfathered. If four-digit CICs are exhausted at such unprecedented rates that the dial-around market is still developing when four-digit codes are used up, the Commission would still have the option of grandfathering four-digit CICs, using the unassigned “1” sequence to properly route the CACs, thus allowing a smooth transition to five-digit CICs.<sup>11</sup>

Telco believes that grandfathering would benefit all current three-digit CIC holders and prospective four-digit CIC holders. It would eliminate the need for a transition period, and the costs and confusion associated with customer reeducation. It also would give the Commission the flexibility it needs to make new CICs available.

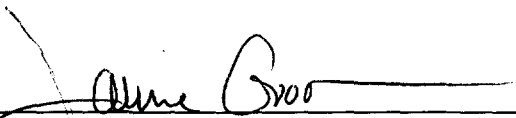
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<sup>11</sup> In fact, this type of sequential grandfathering has several benefits. It eliminates the need for customer re-education, maintains the service status quo for customers, and stabilizes expectations for new entrants regarding the risks and investment for entry. Equally important, the number of CICs available under either the grandfathered scheme or the Commission's current scheme would be virtually the same – at any one time, there will be only 100 fewer CICs made unavailable under a grandfathered system. Under the grandfathered system, the Commission would have to set aside the number “1” sequence at each new level – removing 100 CICs from the pool of available three-digit codes, 1,000 CICs from the pool of available four-digit CICs, 10,000 CICs in the case of five-digits, etc. – leaving the remaining numbers available for new assignments. Under a scheme with no grandfathering, each newly-opened pool of numbers would have to be reduced immediately by the number of existing assignments, *i.e.* 1000 new four-digit CICs would be assigned to replace existing three-digit code assignments, 10,000 five-digit CICs would be assigned to replace existing four-digit code assignments, etc. In other words, except for the original 100 CICs in the “1” sequence that are withheld from the three-digit pool, all of the transitions to new levels will produce the same number of CICs available for new assignments regardless of whether codes are grandfathered or not.

## CONCLUSION

For the reasons set forth above, and those stated in its Petition for Reconsideration, Telco urges the Commission to reconsider its *Order* with respect to the issues raised above.

Respectfully submitted,



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Dated: June 30, 1997

308.02/Pet Reconsideration Reply

## CERTIFICATE OF SERVICE

I, Andrew Baer, hereby certify that on this 30th day of June 1997, true and correct copies of the preceding Reply of Telecommunications Group, Inc. in CC Docket No. 92-237 were served via first class mail, upon the parties on the attached service list.

  
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Andrew Baer

June 30, 1997

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